

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

4 SECURITIES AND EXCHANGE) CASE NO. 4:15-CV-438-A
5 COMMISSION,)
5 Plaintiff,)
6 VERSUS) FORT WORTH, TEXAS
6) JUNE 15, 2015
7 AQUAPHEX TOTAL WATER)
8 SOLUTIONS, LLC, AND)
8 GREGORY G. JONES,)
Defendants.) 10:00 A.M.

10 VOLUME 1 OF 1
11 TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE JOHN McBRYDE
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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PROCEEDINGS

June 15, 2015 - 10:00 a.m.

THE COURT: We're on the line.

This is a conference call between the Court and the attorney for the government and the defendant himself in Case Number 4:15-CV-438-A. It's Securities and Exchange Commission versus Aquaphex, it looks like, Total Water Solutions, LLC, and Gregory Jones.

MR. MCCOLE: Yes, Your Honor, that's correct.

THE COURT: Okay. And that's Timothy McCole?

MR. MCCOLE: Yes, Your Honor.

16 MR. JONES: Yes, Your Honor.

19 MR. JONES: Your Honor, this is Gregory Jones, and I
20 am a licensed attorney, and so I'm also representing Aquaphex
21 as well.

MR. JONES: Yes, sir, I am.

1 be sure that both defendants had representation, and since
2 you're representing yourself and the LLC, both do.

3 I was pleased to see that some progress had been
4 made toward reaching a settlement. I reviewed the papers that
5 were filed, I believe it was the 10th -- well, the complaint
6 was filed on the 10th, so I papers I reviewed -- well,
7 apparently they were filed the same day.

8 There's an Unopposed Motion to Enter Final Judgment
9 as to defendants Aquaphex Total Water Solutions, LLC, and
10 Gregory G. Jones, and I've reviewed those documents.

11 Mr. McCole, is this -- I gather from what I read
12 that this proposed final judgment resolves only the injunction
13 issue?

14 *MR. MCCOLE:* Yes, Your Honor, that's correct.

15 *THE COURT:* And that still open for resolution would
16 be disgorgement and penalties and that sort of thing?

17 *MR. MCCOLE:* Yes, Your Honor, that's correct.

18 *THE COURT:* Okay. The judgment that is submitted is
19 not one that I would be willing to sign, and my main reason
20 for setting up this telephone conference is so I could go over
21 with the two of you the changes that would have to be made in
22 the judgment before I would find it acceptable.

23 Since it's a final judgment as to only certain
24 issues, that is the way I would title it. Instead of the way
25 it's styled, I would just say, Final Judgment as to Certain

1 Issues.

2 MR. MCCOLE: Okay.

3 THE COURT: We'll go over all the changes I have,
4 and if there's agreement, then we'll decide where we go from
5 there.

6 MR. MCCOLE: Sounds good, Your Honor.

7 MR. JONES: Yes, sir.

8 THE COURT: Do both of you have this in front of
9 you?

10 Do you, Mr. McCole, have the judgment in front of
11 you?

12 MR. MCCOLE: I can get it in front of me right quick
13 here.

14 THE COURT: I think it might be helpful.

15 Mr. Jones, do you happen to have it in front of you?

16 MR. JONES: Yes, I do, Your Honor.

17 MR. MCCOLE: And now I do as well, Your Honor.

18 THE COURT: Both of you do?

19 MR. MCCOLE: Yes.

20 MR. JONES: Yes, sir.

21 THE COURT: Okay. Then let's go down, the fourth
22 line down on the first page, which ends with the words, "final
23 judgment." Do you see that line? The line that ends with
24 "the entry of this final judgment." I'm talking about the
25 fourth line down on the proposed final judgment.

1 ~~MR. MCCOLE:~~ Yes, Your Honor.

2 ~~THE COURT:~~ Okay. I'll just add -- every time from
3 there on where we have the words "final judgment," I would add
4 "as to certain issues." I won't repeat that each time as we
5 go through, but each time it says, "final judgment," I would
6 add after that, "as to certain issues," so it would be clear
7 that it's referring to this particular final judgment.

8 ~~MR. MCCOLE:~~ Yes.

9 ~~MR. JONES:~~ Yes, sir.

10 ~~THE COURT:~~ Okay. And then going on down, the last
11 four lines in that introductory paragraph, it starts with the
12 word "judgment," and then goes on and it says, "and defendants
13 having admitted."

14 ~~MR. MCCOLE:~~ Yes, Your Honor.

15 ~~THE COURT:~~ I would delete everything starting with
16 the words "and defendants having admitted," the rest of that
17 paragraph, which goes all the way down through the words
18 "fully set forth herein."

19 ~~MR. MCCOLE:~~ Your Honor, if I may, I am -- I have a
20 request to make, and it's -- it's this. I have a copy of the
21 final judgment in front of me, but I have it electronically.
22 Would it be okay if I printed it out? It will take me about
23 two minutes, and I'll be able to come back with it.

24 ~~THE COURT:~~ I think it would be better if you did,
25 and we'll give you time to do that.

1 *MR. MCCOLE:* Thank you, Your Honor. I apologize for
2 having to pause, but I want to make sure I get this accurate.
3 Just give me one moment, and I'll have this printed out.

4 *THE COURT:* Do you have a printed copy in front of
5 you, Mr. Jones?

6 *MR. JONES:* I am working to print a copy as we
7 speak, Your Honor. I'm doing it right now.

8 *THE COURT:* You're printing a copy now?

9 *MR. JONES:* Yes, sir.

10 *THE COURT:* Okay. Let's both of you get a printed
11 copy of it.

12 *MR. MCCOLE:* Your Honor, I'm walking over to the
13 printer. I have to leave my office for just a second. I will
14 be right back. Take me about 30 seconds or so.

15 *THE COURT:* Okay.

16 *(Pause in Proceedings)*

17 *MR. MCCOLE:* Your Honor, this is Timothy McCole, and
18 I'm back.

19 *THE COURT:* Mr. Jones, tell me when you have a copy
20 printed out.

21 *MR. JONES:* I have it in front of me, Your Honor.

22 *THE COURT:* Okay. I'll go back and review the last
23 thing we talked about, and it's the last four lines in the
24 first introductory paragraph. I'm taking all of that out,
25 except the words "judgment as to certain issues," which is the

1 beginning.

2 MR. MCCOLE: Got it.

3 MR. JONES: Yes, sir.

4 THE COURT: All the rest of that comes out.

5 On the second page, it's fine, except the final
6 judgment, of course, will be modified to say what I've said it
7 will say.

8 The third page is fine, except it will be modified
9 where it says, "final judgment" to say what I said it would
10 say.

11 Same thing on page 4.

12 I would take out all of paragraph five and all of
13 paragraph six on page 5. In other words, I would eliminate
14 everything on page 5, and I would eliminate everything on page
15 6, except that I would have right above the date line, which I
16 would not call dated, I would say signed with the date of
17 signing, and I would have right above it that: The Court
18 determines that there is no just reason for delay in, and
19 hereby directs, entry of final judgment as to the rulings made
20 in this final judgment as to certain issues.

21 Those are the changes I would make, and
22 assuming -- and I do believe that it should be prepared in
23 such a way that there should be, over to the left below the
24 Court's signature line, an approved and agreed to both as to
25 form and substance, and then below that, a place for each

1 party to sign.

2 Now, I realize that some of the documentation
3 indicates that agreements have been reached for certain things
4 on the assumption that a final judgment of permanent
5 injunction, so on, of the kind y'all submitted is signed by
6 the Court.

7 As we've just discussed, such a judgment will not be
8 signed by the Court, so y'all might need to make some slight
9 revisions in what you've already done.

10 Do you understand what I'm talking about,
11 Mr. McCole?

12 MR. MCCOLE: Yes, Your Honor, I do.

13 THE COURT: Now, if y'all want me to go ahead and
14 prepare what I would be willing to sign and have it available
15 for each of you to come over and approve it, both as to form
16 and substance, I'll go ahead and do that, and then count on
17 y'all to make whatever revisions in your own documents that
18 you would like to make.

19 Would you want me to do that, Mr. McCole?

20 MR. MCCOLE: Well, what I would like to do, Your
21 Honor, is explain the revisions the Court would like made,
22 explain those revisions that the Court would find acceptable
23 to my supervisory chain, including up to and including the
24 SEC, you know, the commissioners, to determine whether they
25 would still be interested in or that we would still have a

1 settlement if these changes were made.

2 *THE COURT:* That's fine. I don't have any problem
3 at all with you doing that. Let me make the comment that,
4 basically, the things I've eliminated are things that the
5 parties themselves should agree on and the Court shouldn't be
6 involved in, including incorporating stipulations or whatever
7 it is y'all contemplate on incorporating in judgments. I
8 simply don't do those things.

9 *MR. MCCOLE:* I see. So what -- a version of this
10 kind of settlement that you might be comfortable with, Your
11 Honor, would be wherein the judgment wouldn't contain these
12 kinds of recitations, the ones that you had omitted or
13 deleted, but that the Court would be okay if the parties were
14 to come to reach these terms by way of some sort of an
15 agreement that was not incorporated into the final judgment?

16 Is that what I understand?

17 *THE COURT:* That's the way it's normally done, and
18 it's the way it's always been done in cases before me because
19 I simply don't incorporate documents into my judgment. If the
20 parties have agreements, that's between the parties. I don't
21 concern myself with that.

22 But if they have an agreed judgment, the only thing
23 I'll include in the judgment is the relief ultimately the
24 parties intend for the judgment to accomplish, that is, in
25 this case, an injunction.

1 *MR. MCCOLE:* I see. Okay.

2 *THE COURT:* So, you do what you would like, and
3 we'll just put everything aside, and when a decision is made
4 as to where you want to go from here, file a document signed
5 by you and Mr. Jones advising the Court where you want to go
6 from here.

7 *MR. MCCOLE:* Yes, Your Honor.

8 One final thing then. I was unable to jot down the
9 wording that you would like in that final paragraph, the one
10 that talks about the Court determines that there is no just
11 reason for delay.

12 *THE COURT:* Do you want me to do it again?

13 *MR. MCCOLE:* If you don't mind, Your Honor, yes.

14 *THE COURT:* The Court determines that there is no
15 just reason for delay in, and hereby directs, entry of final
16 judgment as to the rulings made in this final judgment as to
17 certain issues.

18 If you want me to go back and start over again, I
19 will.

20 *MR. MCCOLE:* Yes, Your Honor, one more time.

21 *THE COURT:* Okay. The Court determines that there
22 is no just reason for delay in, --

23 Are you there so far?

24 *MR. MCCOLE:* Yes, Your Honor.

25 *THE COURT:* -- and hereby directs, --

1 Are you there?

2 *MR. MCCOLE:* Yes.

3 *THE COURT:* -- entry of final judgment --

4 Are you there?

5 *MR. MCCOLE:* Yes.

6 *THE COURT:* -- as to the rulings made in this final
7 judgment as to certain issues.

8 *MR. MCCOLE:* Got it.

9 *THE COURT:* Okay.

10 *MR. MCCOLE:* Thank you, Your Honor.

11 *THE COURT:* Y'all file something and let me know
12 what your decision is.

13 *MR. MCCOLE:* Yes, Your Honor.

14 In the meantime, certain documents have been
15 unfiled. We're in the process now of correcting the
16 discrepancies in those filings, and we've resubmitted those to
17 the Court, and hopefully now we have filed those in accordance
18 with the Court's rules.

19 *THE COURT:* Are they documents that pertain to what
20 we're talking about this morning?

21 *MR. MCCOLE:* Yes, they are. They are the documents
22 that initiated the case, the complaint, this motion, the
23 certificate of interested parties, and so on. Now, it's not
24 a -- the revised papers.

25 *THE COURT:* It's the signed versions as required by

1 our standing order?

2 MR. MCCOLE: Yes, Your Honor.

3 THE COURT: Okay. That's fine.

4 MR. MCCOLE: Okay.

5 THE COURT: Okay.

6 MR. MCCOLE: Well, we will put our heads together
7 and come up with something we hope that will resolve the
8 settlement needs of the parties as well as the Court's
9 requirements in terms of the judgments that it will sign.

10 THE COURT: Okay. Very good. Thank y'all for being
11 on the line.

12 MR. MCCOLE: Thank you, Your Honor.

13 MR. JONES: Thank you, Your Honor.

14 (End of Proceedings)

15 **REPORTER'S CERTIFICATE**

16 I, Debra G. Saenz, CSR, RMR, CRR, certify that the
17 foregoing is a true and correct transcript from the record
18 of proceedings in the foregoing entitled matter.

19 I further certify that the transcript fees format
20 comply with those prescribed by the Court and the Judicial
21 Conference of the United States.

22 Signed this 18th day of August, 2015.

23 /s/ Debra G. Saenz
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